

SSB 5610 - H COMM AMD

By Committee on Natural Resources, Ecology & Parks

NOT ADOPTED 04/14/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 77.85.005 and 1999 sp.s. c 13 s 1 are each amended to
4 read as follows:

5 The legislature finds that repeated attempts to improve salmonid
6 fish runs throughout the state of Washington have failed to avert
7 listings of salmon and steelhead runs as threatened or endangered under
8 the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).
9 These listings threaten the sport, commercial, and tribal fishing
10 industries as well as the economic well-being and vitality of vast
11 areas of the state. It is the intent of the legislature to begin
12 activities required for the recovery of salmon stocks as soon as
13 possible, although the legislature understands that successful recovery
14 efforts may not be realized for many years because of the life cycle of
15 salmon and the complex array of natural and human-caused problems they
16 face.

17 The legislature finds that it is in the interest of the citizens of
18 the state of Washington for the state to retain primary responsibility
19 for managing the natural resources of the state, rather than abdicate
20 those responsibilities to the federal government, and that the state
21 may best accomplish this objective by integrating local and regional
22 recovery activities into a statewide ((~~plan~~)) strategy that can make
23 the most effective use of provisions of federal laws allowing for a
24 state lead in salmon recovery, delivered through implementation
25 activities consistent with regional and watershed recovery plans. The
26 legislature also finds that a statewide salmon recovery ((~~plan~~))
27 strategy must be developed and implemented through an active public
28 involvement process in order to ensure public participation in, and
29 support for, salmon recovery. The legislature also finds that there is
30 a substantial link between the provisions of the federal endangered

1 species act and the federal clean water act (33 U.S.C. Sec. 1251 et
2 seq.). The legislature further finds that habitat restoration is a
3 vital component of salmon recovery efforts. Therefore, it is the
4 intent of the legislature to specifically address salmon habitat
5 restoration in a coordinated manner and to develop a structure that
6 allows for the coordinated delivery of federal, state, and local
7 assistance to communities for habitat projects that will assist in the
8 recovery and enhancement of salmon stocks. A strong watershed-based
9 locally implemented plan is essential for local, regional, and
10 statewide salmon recovery.

11 The legislature also finds that credible scientific review and
12 oversight is essential for any salmon recovery effort to be successful.

13 The legislature further finds that it is important to monitor the
14 overall health of the salmon resource to determine if recovery efforts
15 are providing expected returns. It is important to monitor salmon
16 habitat projects and salmon recovery activities to determine their
17 effectiveness in order to secure federal acceptance of the state's
18 approach to salmon recovery. Adaptive management cannot exist without
19 monitoring. For these reasons, the legislature believes that a
20 coordinated and integrated monitoring (~~process~~) system should be
21 developed and implemented.

22 The legislature therefore finds that a coordinated framework for
23 responding to the salmon crisis is needed immediately. To that end,
24 the salmon recovery office should be created within the governor's
25 office to provide overall coordination of the state's response; an
26 independent science panel is needed to provide scientific review and
27 oversight; a coordinated state funding process should be established
28 through a salmon recovery funding board; the appropriate local or
29 tribal government should provide local leadership in identifying and
30 sequencing habitat projects to be funded by state agencies; habitat
31 projects should be implemented without delay; and a strong locally
32 based effort to restore salmon habitat should be established by
33 providing a framework to allow citizen volunteers to work effectively.

34 **Sec. 2.** RCW 77.85.010 and 2002 c 210 s 1 are each amended to read
35 as follows:

36 The definitions in this section apply throughout this chapter
37 unless the context clearly requires otherwise.

1 (1) "Adaptive management" means reliance on scientific methods to
2 test the results of actions taken so that the management and related
3 policy can be changed promptly and appropriately.

4 (2) "Critical pathways methodology" means a project scheduling and
5 management process for examining interactions between habitat projects
6 and salmonid species, prioritizing habitat projects, and assuring
7 positive benefits from habitat projects.

8 (3) "Habitat project list" is the list of projects resulting from
9 the critical pathways methodology under RCW 77.85.060(2). Each project
10 on the list must have a written agreement from the landowner on whose
11 land the project will be implemented. Projects include habitat
12 restoration projects, habitat protection projects, habitat projects
13 that improve water quality, habitat projects that protect water
14 quality, habitat-related mitigation projects, and habitat project
15 maintenance and monitoring activities.

16 (4) "Habitat work schedule" means those projects from the habitat
17 project list that will be implemented during the current funding cycle.
18 The schedule shall also include a list of the entities and individuals
19 implementing projects, the start date, duration, estimated date of
20 completion, estimated cost, and funding sources for the projects.

21 (5) "Limiting factors" means conditions that limit the ability of
22 habitat to fully sustain populations of salmon. These factors are
23 primarily fish passage barriers and degraded estuarine areas, riparian
24 corridors, stream channels, and wetlands.

25 (6) "Project sponsor" is a county, city, special district, tribal
26 government, state agency, a combination of such governments through
27 interlocal or interagency agreements, a nonprofit organization,
28 regional fisheries enhancement group, or one or more private citizens.
29 A project sponsored by a state agency may be funded by the board only
30 if it is included on the habitat project list submitted by the lead
31 entity for that area and the state agency has a local partner that
32 would otherwise qualify as a project sponsor.

33 (7) "Regional recovery organization" or "regional salmon recovery
34 organization" means an entity formed for the purpose of recovering
35 salmon, which is recognized in statute or by the salmon recovery
36 office.

37 (8) "Salmon" includes all species of the family Salmonidae which
38 are capable of self-sustaining, natural production.

1 ~~((+8))~~ (9) "Salmon recovery plan" means a state or regional plan
2 developed in response to a proposed or actual listing under the federal
3 endangered species act that addresses limiting factors including, but
4 not limited to harvest, hatchery, hydropower, habitat, and other
5 factors of decline.

6 ~~((+9))~~ (10) "Salmon recovery region" means geographic areas of the
7 state identified in RCW 77.85.090 that encompass groups of watersheds
8 in the state with common stocks of salmon identified for recovery
9 activities, and that generally are consistent with the geographic areas
10 within the state identified by the national oceanic and atmospheric
11 administration or the United States fish and wildlife service for
12 activities under the federal endangered species act. The salmon
13 recovery regions designated under RCW 77.85.090 are salmon recovery
14 regions for all purposes of this chapter.

15 (11) "Tribe" or "tribes" means federally recognized Indian tribes.

16 ~~((+10))~~ (12) "WRIA" means a water resource inventory area
17 established in chapter 173-500 WAC as it existed on January 1, 1997.

18 ~~((+11))~~ (13) "Owner" means the person holding title to the land or
19 the person under contract with the owner to lease or manage the legal
20 owner's property.

21 **Sec. 3.** RCW 77.85.020 and 1998 c 246 s 4 are each amended to read
22 as follows:

23 ~~((Beginning in))~~ (1) By December ~~((2000))~~ 1, 2006, December 1,
24 2008, December 1, 2010, and December 1, 2012, the governor shall submit
25 a ~~((biennial state of the salmon))~~ report to the legislature ~~((during~~
26 ~~the first week of December))~~ regarding the implementation of the
27 state's salmon recovery strategy. The report may include the
28 following:

29 ~~((+1))~~ (a) A description of the amount of in-kind and financial
30 contributions, including volunteer, private, and state, federal, tribal
31 as available, and local government money directly spent on salmon
32 recovery in response to actual, proposed, or expected endangered
33 species act listings;

34 ~~((+2))~~ (b) A summary of habitat projects including but not limited
35 to:

36 ~~((+a))~~ (i) A summary of accomplishments in removing barriers to
37 salmon passage and an identification of existing barriers;

- 1 ~~((b))~~ (ii) A summary of salmon restoration efforts undertaken in
2 the past two years;
- 3 ~~((c))~~ (iii) A summary of the role which private volunteer
4 initiatives contribute in salmon habitat restoration efforts; and
- 5 ~~((d))~~ (iv) A summary of efforts taken to protect salmon habitat;
- 6 ~~((3))~~ (c) A summary of collaborative efforts undertaken with
7 adjoining states or Canada;
- 8 ~~((4))~~ (d) A summary of harvest and hatchery management activities
9 affecting salmon recovery;
- 10 ~~((5))~~ (e) A summary of information regarding impediments to
11 successful salmon recovery efforts;
- 12 ~~((6))~~ (f) A summary of the number and types of violations of
13 existing laws pertaining to: ~~((a))~~ (i) Water quality; and ~~((b))~~
14 (ii) salmon. The summary shall include information about the types of
15 sanctions imposed for these violations;
- 16 ~~((7))~~ (g) Information on the estimated carrying capacity of new
17 habitat created pursuant to chapter 246, Laws of 1998; and
- 18 ~~((8))~~ (h) Recommendations to the legislature that would further
19 the success of salmon recovery. The recommendations may include:
- 20 ~~((a))~~ (i) The need to expand or improve nonregulatory programs
21 and activities; ~~(and~~
22 ~~(b))~~ (ii) The need to expand or improve state and local laws and
23 regulations; and
24 (iii) Recommendations for state funding assistance to recovery
25 activities and projects.
- 26 (2) The report shall summarize the monitoring data coordinated by
27 the monitoring forum. The summary must include but is not limited to
28 data and analysis related to:
- 29 (a) Measures of progress in fish recovery;
- 30 (b) Measures of factors limiting recovery as well as trends in such
31 factors; and
- 32 (c) The status of implementation of projects and activities.

33 **Sec. 4.** RCW 77.85.030 and 2000 c 107 s 93 are each amended to read
34 as follows:

35 (1) The salmon recovery office is created within the office of the
36 governor to coordinate state strategy to allow for salmon recovery to
37 healthy sustainable population levels with productive commercial and

1 recreational fisheries. The primary purpose of the office is to
2 coordinate and assist in the development of regional salmon recovery
3 plans (~~((for evolutionarily significant units, and submit those plans to~~
4 ~~the appropriate tribal governments and federal agencies))~~) as an
5 integral part of a statewide strategy developed consistent with the
6 guiding principles and procedures under RCW 77.85.150. The governor's
7 salmon recovery office (~~may also:~~

8 ~~(a))~~ shall assist regional recovery organizations in submitting
9 plans to the federal fish services for adoption as federal recovery
10 plans. The governor's salmon recovery office may also:

11 (a) Assist state agencies, local governments, landowners, and other
12 interested parties in obtaining federal assurances that plans,
13 programs, or activities are consistent with fish recovery under the
14 federal endangered species act;

15 (b) Act as liaison to local governments, the state congressional
16 delegation, the United States congress, federally recognized tribes,
17 and the federal executive branch agencies for issues related to the
18 state's (~~endangered species act~~) salmon recovery plans; and

19 ~~((b))~~ (c) Provide (~~the biennial state of the salmon report to~~
20 the legislature)) periodic reports pursuant to RCW 77.85.020.

21 (2) This section expires June 30, (~~(2006)~~) 2015.

22 **Sec. 5.** RCW 77.85.040 and 2000 c 107 s 94 are each amended to read
23 as follows:

24 (1) The governor shall request the national academy of sciences,
25 the American fisheries society, or a comparable institution to screen
26 candidates to serve as members on the independent science panel. The
27 institution that conducts the screening of the candidates shall submit
28 a list of the nine most qualified candidates to the governor, the
29 speaker of the house of representatives, and the majority leader of the
30 senate. The candidates shall reflect expertise in habitat requirements
31 of salmon, protection and restoration of salmon populations, artificial
32 propagation of salmon, hydrology, or geomorphology.

33 (2) The speaker of the house of representatives and the majority
34 leader in the senate may each remove one name from the nomination list.
35 The governor shall consult with tribal representatives and the governor
36 shall appoint five scientists from the remaining names on the
37 nomination list.

1 (3) The members of the independent science panel shall serve four-
2 year terms. Vacant positions on the panel shall be filled in the same
3 manner as the original appointments. Members shall serve no more than
4 two full terms. The independent science panel members shall elect the
5 chair of the panel among themselves every two years. Based upon
6 available funding, the governor's salmon recovery office may contract
7 for services with members of the independent science panel for
8 compensation under chapter 39.29 RCW.

9 (4) The independent science panel shall be governed by generally
10 accepted guidelines and practices governing the activities of
11 independent science boards such as the national academy of sciences.
12 The purpose of the independent science panel is to help ensure that
13 sound science is used in salmon recovery efforts. The governor's
14 salmon recovery office (~~shall~~) may request review of regional salmon
15 recovery plans by the science review panel. The science panel does not
16 have the authority to review individual projects or habitat project
17 lists developed under RCW 77.85.050(~~(7)~~) or 77.85.060(~~(7) and~~
18 ~~75.46.080~~) or to make policy decisions. The panel shall periodically
19 submit its findings and recommendations under this subsection to the
20 legislature and the governor.

21 (~~(5) The independent science panel, in conjunction with the~~
22 ~~technical review team, shall recommend standardized monitoring~~
23 ~~indicators and data quality guidelines for use by entities involved in~~
24 ~~habitat projects and salmon recovery activities across the state.~~

25 (~~(6) The independent science panel, in conjunction with the~~
26 ~~technical review team, shall also recommend criteria for the systematic~~
27 ~~and periodic evaluation of monitoring data in order for the state to be~~
28 ~~able to answer critical questions about the effectiveness of the~~
29 ~~state's salmon recovery efforts.~~

30 (~~(7) The recommendations on monitoring as required in this section~~
31 ~~shall be provided in a report to the governor and to the legislature by~~
32 ~~the independent science panel, in conjunction with the salmon recovery~~
33 ~~office, no later than December 31, 2000. The report shall also include~~
34 ~~recommendations on the level of effort needed to sustain monitoring of~~
35 ~~salmon projects and other recovery efforts, and any other~~
36 ~~recommendations on monitoring deemed important by the independent~~
37 ~~science panel and the technical review team. The report may be~~

1 ~~included in the biennial state of the salmon report required under RCW~~
2 ~~77.85.020.))~~

3 **Sec. 6.** RCW 77.85.050 and 1999 sp.s. c 13 s 11 are each amended to
4 read as follows:

5 (1)(a) Counties, cities, and tribal governments must jointly
6 designate, by resolution or by letters of support, the area for which
7 a habitat project list is to be developed and the lead entity that is
8 to be responsible for submitting the habitat project list. No project
9 included on a habitat project list shall be considered mandatory in
10 nature and no private landowner may be forced or coerced into
11 participation in any respect. The lead entity may be a county, city,
12 conservation district, special district, tribal government, regional
13 recovery organization, or other entity.

14 (b) The lead entity shall establish a committee that consists of
15 representative interests of counties, cities, conservation districts,
16 tribes, environmental groups, business interests, landowners, citizens,
17 volunteer groups, regional fish enhancement groups, and other habitat
18 interests. The purpose of the committee is to provide a citizen-based
19 evaluation of the projects proposed to promote salmon habitat. (~~The~~
20 ~~technical review team may provide the lead entity with organizational~~
21 ~~models that may be used in establishing the committees.))~~

22 (c) The committee shall compile a list of habitat projects,
23 establish priorities for individual projects, define the sequence for
24 project implementation, and submit these activities as the habitat
25 project list. The committee shall also identify potential federal,
26 state, local, and private funding sources.

27 (2) The area covered by the habitat project list must be based, at
28 a minimum, on a WRIA, combination of WRIAs, or any other area as agreed
29 to by the counties, cities, and tribes in resolutions or in letters of
30 support meeting the requirements of this subsection. Preference will
31 be given to projects in an area that contain a salmon species that is
32 listed or proposed for listing under the federal endangered species
33 act.

34 (3) The lead entity shall submit the habitat project list to the
35 (~~technical review team~~) board in accordance with procedures adopted
36 by the board.

1 **Sec. 7.** RCW 77.85.090 and 2000 c 107 s 99 are each amended to read
2 as follows:

3 (1) The southwest Washington salmon recovery region, whose
4 boundaries are provided in chapter 60, Laws of 1998, is created.

5 (2) The Puget Sound salmon recovery region is created.

6 (3) The Yakima basin salmon recovery region is created.

7 (4) The upper Columbia salmon recovery region is created.

8 (5) The Snake river salmon recovery region is created.

9 (6) The legislature, with the assistance of the salmon recovery
10 office, may designate additional salmon recovery regions that are
11 generally consistent with the areas within the state designated by the
12 national oceanic and atmospheric administration or the United States
13 fish and wildlife service for federal recovery planning.

14 **Sec. 8.** RCW 77.85.130 and 2000 c 107 s 102 and 2000 c 15 s 1 are
15 each reenacted and amended to read as follows:

16 (1) The salmon recovery funding board shall develop procedures and
17 criteria for allocation of funds for salmon habitat projects and salmon
18 recovery activities on a statewide basis to address the highest
19 priorities for salmon habitat protection and restoration. To the
20 extent practicable the board shall adopt an annual allocation of
21 funding. The allocation should address both protection and restoration
22 of habitat, and should recognize the varying needs in each area of the
23 state on an equitable basis. The board has the discretion to partially
24 fund, or to fund in phases, salmon habitat projects. The board may
25 annually establish a maximum amount of funding available for any
26 individual project, subject to available funding. No projects required
27 solely as a mitigation or a condition of permitting are eligible for
28 funding.

29 (2)(a) In evaluating, ranking, and awarding funds for projects and
30 activities the board shall give preference to projects that:

31 (i) Are based upon the limiting factors analysis identified under
32 RCW 77.85.060;

33 (ii) Provide a greater benefit to salmon recovery based upon the
34 stock status information contained in the department of fish and
35 wildlife salmonid stock inventory (SASSI), the salmon and steelhead
36 habitat inventory and assessment project (SSHIAP), and any comparable
37 science-based assessment when available;

1 (iii) Will benefit listed species and other fish species; ~~((and))~~
2 (iv) Will preserve high quality salmonid habitat; and
3 (v) Are included in a regional or watershed-based salmon recovery
4 plan that accords the project, action, or area a high priority for
5 funding.

6 (b) In evaluating, ranking, and awarding funds for projects and
7 activities the board shall also give consideration to projects that:

- 8 (i) Are the most cost-effective;
9 (ii) Have the greatest matched or in-kind funding; ~~((and))~~
10 (iii) Will be implemented by a sponsor with a successful record of
11 project implementation; and
12 (iv) Are part of a regionwide list developed by lead entities.

13 (3) The board may reject, but not add, projects from a habitat
14 project list submitted by a lead entity for funding.

15 ~~(4) ((For fiscal year 2000, the board may authorize the interagency~~
16 ~~review team to evaluate, rank, and make funding decisions for~~
17 ~~categories of projects or activities or from funding sources provided~~
18 ~~for categories of projects or activities. In delegating such authority~~
19 ~~the board shall consider the review team's staff resources, procedures,~~
20 ~~and technical capacity to meet the purposes and objectives of this~~
21 ~~chapter. The board shall maintain general oversight of the team's~~
22 ~~exercise of such authority.~~

23 ~~(5) The board shall seek the guidance of the technical review team~~
24 ~~to ensure that scientific principles and information are incorporated~~
25 ~~into the allocation standards and into proposed projects and~~
26 ~~activities. If the technical review team determines that a habitat~~
27 ~~project list complies with the critical pathways methodology under RCW~~
28 ~~77.85.060, it shall provide substantial weight to the list's project~~
29 ~~priorities when making determinations among applications for funding of~~
30 ~~projects within the area covered by the list.~~

31 ~~(6))~~ The board shall establish criteria for determining when block
32 grants may be made to a lead entity ~~((or other recognized regional~~
33 ~~recovery entity))~~ consistent with one or more habitat project lists
34 developed for that region. Where a lead entity has been established
35 pursuant to RCW 77.85.050, the board may provide block grants to the
36 lead entity to assist in ~~((carrying out lead entity functions under~~
37 ~~this chapter,))~~ project implementation subject to available funding.
38 The board shall determine an equitable minimum amount of project

1 implementation funds for each recovery region, and shall distribute the
2 remainder of funds on a competitive basis. The board may also provide
3 grants to the lead entity or regional recovery organization to assist
4 in carrying out functions described under this chapter.

5 ((+7)) (5) The board may waive or modify portions of the
6 allocation procedures and standards adopted under this section in the
7 award of grants or loans to conform to legislative appropriations
8 directing an alternative award procedure or when the funds to be
9 awarded are from federal or other sources requiring other allocation
10 procedures or standards as a condition of the board's receipt of the
11 funds. The board shall develop an integrated process to manage the
12 allocation of funding from federal and state sources to minimize delays
13 in the award of funding while recognizing the differences in state and
14 legislative appropriation timing.

15 ((+8)) (6) The board may award a grant or loan for a salmon
16 recovery project on private or public land when the landowner has a
17 legal obligation under local, state, or federal law to perform the
18 project, when expedited action provides a clear benefit to salmon
19 recovery, and there will be harm to salmon recovery if the project is
20 delayed. For purposes of this subsection, a legal obligation does not
21 include a project required solely as a mitigation or a condition of
22 permitting.

23 ((+9)) (7) The board may condition a grant or loan to include the
24 requirement that property may only be transferred to a federal agency
25 if the agency that will acquire the property agrees to comply with all
26 terms of the grant or loan to which the project sponsor was obligated.
27 Property acquired or improved by a project sponsor may be conveyed to
28 a federal agency, but only if the agency agrees to comply with all
29 terms of the grant or loan to which the project sponsor was obligated.

30 **Sec. 9.** RCW 77.85.150 and 1999 sp.s. c 13 s 9 are each amended to
31 read as follows:

32 (1) ((~~By September 1, 1999,~~)) The governor, with the assistance of
33 the salmon recovery office, shall ((~~submit a statewide salmon recovery~~
34 strategy to the appropriate federal agencies administering the federal
35 endangered species act)) maintain and revise a statewide salmon
36 recovery strategy.

1 (2) The governor and the salmon recovery office shall be guided by
2 the following considerations in (~~developing~~) maintaining and revising
3 the strategy:

4 (a) The strategy should identify statewide initiatives and
5 responsibilities with regional recovery plans and local watershed
6 initiatives as the principal (~~mechanism~~) means for implementing the
7 strategy;

8 (b) The strategy should emphasize collaborative, incentive-based
9 approaches;

10 (c) The strategy should address all factors limiting the recovery
11 of Washington's listed salmon stocks, including habitat and water
12 quality degradation, harvest and hatchery management, inadequate
13 streamflows, and other barriers to fish passage. Where other limiting
14 factors are beyond the state's jurisdictional authorities to respond
15 to, such as some natural predators and high seas fishing, the strategy
16 shall include the state's requests for federal action to effectively
17 address these factors;

18 (d) The strategy should identify immediate actions necessary to
19 prevent extinction of a listed salmon stock, establish performance
20 measures to determine if restoration efforts are working, recommend
21 effective monitoring and data management, and recommend to the
22 legislature clear and certain measures to be implemented if performance
23 goals are not met;

24 (e) The strategy shall rely on the best scientific information
25 available and provide for incorporation of new information as it is
26 obtained;

27 (f) The strategy should seek a fair allocation of the burdens and
28 costs upon economic and social sectors of the state whose activities
29 may contribute to limiting the recovery of salmon; and

30 (g) The strategy should seek clear measures and procedures from the
31 appropriate federal agencies for removing Washington's salmon stocks
32 from listing under the federal act.

33 (3) Beginning on September 1, 2000, the strategy shall be updated
34 through an active public involvement process, including early and
35 meaningful opportunity for public comment. In obtaining public
36 comment, the salmon recovery office shall hold public meetings
37 throughout the state and shall encourage regional and local recovery

1 planning efforts to similarly ensure an active public involvement
2 process.

3 (4) This section shall apply prospectively only and not
4 retroactively. Nothing in this section shall be construed to
5 invalidate actions taken in recovery planning at the local, regional,
6 or state level prior to July 1, 1999.

7 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
8 each repealed:

9 (1) RCW 77.85.070 (Technical advisory groups) and 2000 c 107 s 97
10 & 1998 c 246 s 10; and

11 (2) RCW 77.85.210 (Monitoring activities--Monitoring oversight
12 committee--Legislative steering committee--Report to the legislature--
13 Monitoring strategy and action plan) and 2001 c 298 s 3."

14 Correct the title.

--- END ---